

IN THE COURT OF APPEALS 3/26/96

OF THE

STATE OF MISSISSIPPI

NO. 94-KA-00702 COA

MICHAEL BOOKER

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JOSEPH H. LOPER, JR.

COURT FROM WHICH APPEALED: CIRCUIT COURT OF GRENADA COUNTY

ATTORNEY FOR APPELLANT:

ROBERT T. LASTER, JR.

ATTORNEY FOR APPELLEE:

ATTORNEY GENERAL MIKE MOORE

BY: W. GLEN WATTS

NATURE OF THE CASE: MURDER

TRIAL COURT DISPOSITION: CONVICTED OF MURDER AND SENTENCED TO LIFE
IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF
CORRECTIONS

BEFORE THOMAS, P.J., DIAZ, AND KING, JJ.

PER CURIAM:

Michael Booker was convicted of murder. From that conviction he appeals to this Court asserting two alleged errors. Finding no error, we affirm.

DISCUSSION

Booker and three of his friends, Toronzo Brown, Terry Braxton, and Desmond Carter, were walking back to their car in the parking lot of the Grenada County Fairgrounds when they were approached by approximately fifteen other men. Arguments ensued resulting in the death of Derrick Pratt through gun shots fired by the defendant, Booker. Booker admits to shooting Pratt but argues instead that he was justified in doing so.

Booker put forth evidence that Pratt pulled a gun first, pointed it at him and began "clicking the gun and stuff." The State put forth evidence that Pratt was not armed, and the only person who was armed was Booker.

Booker argues to this Court two issues. First, he argues that the trial court should have granted a mistrial because of the fact that prior to jury deliberation there was a power outage caused by an ice storm. Second, he argues that the verdict was against the overwhelming weight of the evidence. Specifically, he argues that the jury should have only been allowed to consider the charge of manslaughter because there was no proof that Booker acted with malice or deliberate design. We will take both issues separately.

We find that the trial court did not err in failing to grant a mistrial because of the fact that there was no power in the courthouse during the jury's deliberation. This Court does not find persuasive Booker's argument that the jury's forty-five minute deliberation showed that it hurried its judgment so that it could go home and get out of the ice storm.

In *Brent v. State*, 632 So. 2d 936, 941 (Miss. 1994) our supreme court stated that

The decision to declare a mistrial is within the sound discretion of the trial judge. *See Arizona v. Washington*, 434 U.S. 497, 512, 98 S.Ct. 824, 834, 54 L. Ed. 2d 717 (1978); *Grandberry v. Bonner*, 653 F.2d 1010 (5th Cir.1981). To find error from a trial judge's failure to declare a mistrial, there must have been an abuse of discretion. *Jones v. State*, 398 So. 2d 1312, 1318 (Miss. 1981); *Schwarzauer v. State*, 339 So. 2d 980, 982 (Miss. 1976).

We cannot say that the trial court abused its discretion. Booker cannot produce any evidence, other than the fact that the jury deliberated for forty-five minutes, to show that the jury's verdict was influenced by the ice storm.

Booker's final argument is that the case should have only been presented to the jury under the theory of manslaughter. He argues that there was no proof which would substantiate the charge of murder. We cannot agree. As stated earlier there were two different sides presented to the jury. This was a

classic jury issue. The jury was given the opportunity to find Booker: (1) not guilty, (2) guilty of manslaughter, or (3) guilty of murder. The jury was free to believe which ever version of events they chose, and unfortunately for Booker, the jury chose to believe that he shot and killed Pratt without provocation.

Our scope of review is limited, has been stated many times before, and need not be restated here. *McClain v. State*, 625 So. 2d 774, 778 (Miss. 1993); *McFee v. State*, 511 So. 2d 130, 133-34 (Miss. 1987); *Wetz v. State*, 503 So. 2d 803, 812 (Miss. 1987). Suffice to say that the weight of the evidence supports the jury's verdict.

THE CONVICTION OF MURDER BY THE GRENADA COUNTY CIRCUIT COURT AND SENTENCE OF LIFE IMPRISONMENT IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO GRENADA COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.